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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

WILFREDO ANTONIO IRAHETA,

Defendant and Appellant.

C085358

(Super. Ct. No. CR16-7534)

A jury convicted Wilfredo Antonio Iraheta of corporal injury to a spouse and false imprisonment by force, but found him not guilty of several sexual offenses against his wife. The trial court sentenced him to four years in state prison.

Defendant now contends his trial counsel was constitutionally ineffective because he did not move to suppress defendant's confession to police in which he admitted pulling his wife off the bed and dragging her down the hall, but claimed that the sex was consensual. We conclude defendant's ineffective assistance claim fails because defense counsel had a tactical reason for not moving to suppress the confession, and a motion to suppress probably would have been futile. We will affirm the judgment.

BACKGROUND

Defendant and the victim were married and had a daughter. They began having marital problems when defendant had difficulty maintaining a job. In December 2016, the victim moved to an apartment.

The victim subsequently reported to police that defendant repeatedly showed up uninvited to her apartment. Among other things, she told Woodland Police Detective Parveen Lal that defendant grabbed her wrist, pulled her to the ground from their bed, dragged her down the hall into the living room, struck her, pushed her, and pulled her hair. She begged him to allow her to return to the bedroom, but he refused.

Detective Lal interviewed defendant. At the beginning of the interview, Detective Lal advised defendant of his *Miranda*¹ rights and asked him if he understood his rights. Defendant responded that he did. The following exchange then occurred:

[LAL]: “Okay. So, uh, you want to talk to me about all this stuff, what happened Monday night? The domestic violence, where you drug?”

[DEFENDANT]: “Was I drugged?”

[LAL]: “You, you want to talk to me about what happened on Monday night? Tuesday morning? You want to tell me your side of the story?”

[DEFENDANT]: “Um, no.

[LAL]: “You don’t want to talk to me?”

[DEFENDANT]: “Well, well it’s not a matter of, I’m willing to talk I mean it’s just.” After indicating his willingness to talk, Detective Lal continued the interview and defendant admitted that he dragged the victim out of bed and into the living room. He claimed, however, that he and his wife were intimate and had sex, implying the sexual acts were consensual and that he did not rape her.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda*).

At trial, the victim testified that on the night of the incident, defendant had attempted to wake her from her bed, but she kept her eyes closed hoping he would leave her alone. Defendant then grabbed her by her arm and pulled her out of bed; he dragged her on the floor down the hallway into the living room. She suffered bruising on her back and knees from being dragged; photos of the bruises were shown to the jury. Although the victim had initially reported to Detective Lal that defendant had raped her and forced her to orally copulate him, at trial she recanted and testified that the sexual acts were consensual.

Defendant did not testify, but the prosecutor played the video recording of his police interview with Detective Lal for the jury. Defense counsel did not challenge the admissibility of that statement or otherwise move to suppress the recording.

The jury convicted defendant of corporal injury to a spouse (Pen. Code, § 273.5, subd. (a) -- count one) and false imprisonment by force or violence (Pen. Code, § 237, subd. (a) -- count four). The trial court sentenced defendant to the upper term of four years in state prison for the corporal injury conviction and a concurrent three-year term for the false imprisonment conviction.

DISCUSSION

Defendant contends he received prejudicially ineffective assistance of counsel in violation of his state and federal constitutional rights because his trial attorney failed to move to suppress his statements to police pursuant to *Miranda*. According to him, his statement, “um, no,” in response to Detective Lal’s initial question asking him if he wanted to tell his side of the story after being advised of his *Miranda* rights was a clear and unambiguous assertion of his right to remain silent. Any statements after this invocation, he argues, were suppressible and competent counsel would have moved to exclude such statements, which included defendant’s admissions to dragging his wife out of her bed and down the hall into the living room.

To establish ineffective assistance of counsel, defendant must show, by a preponderance of the evidence, that his counsel's representation fell below the standard of a competent advocate and a reasonable probability exists that, but for counsel's errors, the result would have been different. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216-218.) A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. (*People v. Bolin* (1998) 18 Cal.4th 297, 333.)

In determining whether counsel's performance was deficient, we exercise deferential scrutiny and "assess the reasonableness of counsel's acts or omissions . . . under the circumstances as they stood at the time that counsel acted or failed to act." (*Ledesma, supra*, 43 Cal.3d at p. 216; see *Strickland v. Washington* (1984) 466 U.S. 668, 689 [80 L.Ed.2d 674] ["Judicial scrutiny of counsel's performance must be highly deferential"].) "Although deference is not abdication [citation], courts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight." (*People v. Scott* (1997) 15 Cal.4th 1188, 1212.)

We presume that counsel's conduct fell within the "wide range of reasonable professional assistance." (*People v. Maury* (2003) 30 Cal.4th 342, 389.) Our review is limited to the record on appeal and we must reject a claim of ineffective assistance "if the record sheds no light on why counsel acted or failed to act in the manner challenged unless (1) counsel was asked for and failed to provide a satisfactory explanation or (2) there simply could be no satisfactory explanation." (*People v. Burgener* (2003) 29 Cal.4th 833, 880.) A failure to object to evidence is generally not a profitable basis for challenging the competence of trial counsel. (*People v. Kelly* (1992) 1 Cal.4th 495, 520 [failure to object to evidence is a matter of trial tactics as to which we will not exercise judicial hindsight].)

The record in this case strongly suggests a reasonable explanation for the failure to move to suppress defendant's statement to police. Although the statement was harmful to defendant in some respects because defendant admitted pulling his wife out of bed and

dragging her down the hall to the living room, competent counsel could reasonably believe it helped the defense in other respects because defendant claimed the sexual acts were consensual. (*Kelly, supra*, 1 Cal.4th at p. 520-521.) Defendant's statements that he and his wife were intimate and had sex tended to refute the serious spousal rape and forcible oral copulation charges. In effect, defendant's statement to police was an opportunity for the jury to hear defendant testify without being subjected to cross-examination. (*Id.* at p. 521.) And the strategy may have worked. The jury was unable to reach a verdict on the three sexual offense charges, and the court declared a mistrial on those counts.

Thus, while it is true that portions of the police interview may have helped the prosecution on the lesser corporal injury and false imprisonment charges, in other ways the statement bolstered the defense on the more significant sexual offenses. "Competent counsel often are confronted with tactical choices that have cons as well as pros; a fortiori, they are permitted, indeed required, to make them." (*Kelly, supra*, 1 Cal.4th at p. 522.) We cannot say that defense counsel was deficient on this record.

It is also noteworthy that to invoke the Fifth Amendment privilege to remain silent and halt police questioning after it has begun, a suspect must unambiguously assert his right to silence or counsel. (*People v. Suff* (2014) 58 Cal.4th 1013, 1068.) " 'It is not enough for a reasonable police officer to understand that the suspect *might* be invoking his rights. [Citation.] Faced with an ambiguous or equivocal statement, law enforcement officers are not required under *Miranda* . . . either to ask clarifying questions or to cease questioning altogether.' " (*Ibid.*, original italics.) Based on our independent review of the record (*id.* at p. 1068), we conclude defendant did not make an unambiguous invocation of his right to remain silent. Under the circumstances, a reasonable attorney could conclude that any motion to suppress defendant's police statement as a violation of *Miranda* would be futile. Trial attorneys are not required to make frivolous motions.

(*People v. Anderson* (2001) 25 Cal.4th 543, 587; *People v. Memro* (1995) 11 Cal.4th 786, 834 [no need to make “probably” futile motion].)

DISPOSITION

The judgment is affirmed.

 /S/
MAURO, Acting P. J.

We concur:

 /S/ ,
DUARTE, J.

 /S/
RENNER, J.